Supreme Court, U.S.
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MICHAEL RODAK, JR., CLER

No. 80-221

IN THE

Supreme Court of the United States

OCTOBER TERM, 1980

INTERNATIONAL UNION OF ELECTRICAL, RADIO AND MACHINE WORKERS, AFL-CIO, CLC, INTERNATIONAL UNION OF ELECTRICAL, RADIO AND MACHINE WORKERS, LOCAL 775 AND INTERNATIONAL UNION OF ELECTRICAL, RADIO AND MACHINE WORKERS, LOCAL 758, *Petitioners,*

— AGAINST —

EQUAL EMPLOYMENT OPPORTUNITY COMMISSION AND CHRYSLER CORPORATION, *Respondents.*

On Petition for a Writ of Certiorari to the United States Court of Appeals for the Sixth Circuit

PETITIONERS' REPLY BRIEF

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PETITIONERS' REPLY BRIEF

This brief is submitted in reply to the Memorandum For The Equal Employment Opportunity Commission. The EEOC takes the position that the issue in this case does not warrant further review by this Court because it involves a "fact-bound issue" of "abuse of discretion" (at p. 3). The EEOC states,

however, that it would not oppose a remand for further proceedings in light of the new EEOC policy regarding union enforcement efforts.[1/]

1. The EEOC incorrectly characterizes the question presented in the Petition. While it is true that the allocation of liability for fees under Rule 53 is generally a matter of district court discretion, and thus is usually dependent upon the factual circumstances of each case, that discretion is necessarily circumscribed by the intended scope of Rule 53. The Petition in this case raises the question of whether Rule 53 authorizes a district court to impose liability for a master's fee upon a defendant that has not been charged with a law violation, or prevailed against in any respect in the litigation. Thus, the issue is neither "fact-bound" nor one of abuse of discretion, but a legal question appropriate for resolution by this Court in light of its significance to federal litigants generally, and to enforcement of employment discrimination laws in particular.

[1/] See EEOC Background Paper and Resolution to Encourage Voluntary Affirmative Action in Collective Bargaining, BNA Daily Labor Reports, No. 65, p. D-1, April 2, 1980.

2. In our Petition we argued that the effect of the decision below will be to deter vigorous union support of EEOC efforts to eliminate discriminatory employment practices, contrary to the recently issued Commission Resolution, cited in n. 1, supra, which was designed to encourage and reward union support for Title VII enforcement. In its suggestion that the judgment below be vacated and the case remanded, the EEOC's memorandum confirms that the allocation of liability for costs in a case such as this should be determined with reference to that EEOC Resolution. See also Brief for the United States and the Equal Employment Opportunity Commission as Amicus Curiae in Northwest Airlines, Inc. v. Transport Workers of America, AFL-CIO, No. 79-1056, at 27-28.[2/] While we believe that the

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[2/] In its Northwest brief, the Government argues against the implication of a right of contribution for an employer against a union in part because it would undermine this same EEOC policy. "[T]he risk of third-party liability and of the costs and efforts associated with resisting such liability would discourage employers and unions from the very efforts to expose and oppose discrimination that the Commission is seeking to encourage."

(2/ cont'd on next page.)

question presented as to the existence of district court authority to impose liability for fees on a non-culpable Title VII defendant is important and warrants plenary review, we do not oppose a remand as suggested by the EEOC.

Conclusion

The petition for certiorari should be granted.

(2/ cont'd from preceding page.)

Id. at 28. See also Brief for the International Union of Electrical, Radio and Machine Workers, AFL-CIO, No. 79-1056, at pp. 14-18. The decision below raises an even sharper conflict with the EEOC policy than would a pro-contribution decision in Northwest because it allows imposition of liability on a union not alleged to be guilty of a violation of Title VII, and solely because of its cooperation with EEOC enforcement efforts. Such a result is particularly ironic in light of the EEOC's explicit reliance on Petitioners' affirmative action activities as a model in formulating its general policy statement. See Brief for the United States and Equal Employment Opportunity Commission as Amicus Curiae in Northwest Airlines, Inc. v. Transport Workers of America, AFL-CIO, No. 79-1056, p. 6a.

Respectfully submitted,

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